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UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on December 3, 2001

**NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10351**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Vega Airlines Ltd.**

Date Filed: August 6, 2001

Relief requested: Exemption from 49 U.S.C. 41301 to conduct charter foreign air transportation of property and mail between Bulgaria and the United States, and other all-cargo charters pursuant to 14 CFR 212 of the Department's regulations.

If renewal, date and citation of last action: New authority

Applicant representative: Mark Atwood 202-463-2513

Responsive pleadings: On August 20 and September 12, 2001, United Air Lines, Inc., submitted pleadings stating that the Department should only approve Vega's application on the basis of comity and reciprocity once it became clear that the Bulgarian Civil Aviation Authority (CAA) was prepared to approve United's request to initiate its third-country code share services with Lufthansa. On November 21, 2001, United informed the Department that it has now received the required approvals from the Bulgarian CAA, and believes that comity and reciprocity would justify approval of Vega's application.

On August 21, 2001, Lynden Air Cargo, LLC, filed an answer in opposition to Vega's application. Lynden stated that, in light of the type of aircraft to be operated, the current level and history of U.S.-Bulgaria commercial cargo operations, as well as other information in the application, it would appear that Vega intends to rely predominantly or almost exclusively on fifth-freedom charters for its U.S. operations, and it objects on the basis that U.S. policy stipulates that foreign carriers should place substantial reliance on homeland-U.S. operations.

Vega filed a reply, stating that Lynden's argument is unsupported and based solely on presumption, and that its application focuses primarily on the U.S.-Bulgaria market and the need for services between the two. It further stated that it did recognize the likely need for fifth-freedom flights in the future and noted its intent to apply for such authority to the extent permitted under 14 CFR 212 and Department policy, and that, since such applications are considered on a case-by-case basis, the Department need not make a determination in advance based only on speculation and presumption.

**DISPOSITION**

Action: Approved

Action date: December 3, 2001

Effective dates of authority granted: December 3, 2001 - December 3, 2002

Basis for approval: We find, based on the record in this case, that comity and reciprocity with Bulgaria is sufficient to warrant approval of the requested authority. We further find that the carrier is substantially owned and effectively controlled by citizens of Bulgaria, properly licensed, and operationally and financially qualified to undertake the proposed operations.<sup>1</sup> Further, the FAA has advised us that it knows of no reason to withhold this authority. Finally, we do not find that this exemption proceeding provides the appropriate forum to pursue Lynden's concerns over Vega's potential to place undue reliance on fifth-freedom charter operations. The charter authority we are granting in this proceeding requires Vega to apply for prior approval in the form of a statement of authorization under 14 CFR 212 to operate fifth-freedom charters. We consider foreign carrier requests for such charters on a case-by-case basis within the scope of Part 212, and Lynden and other interested parties will have the opportunity submit comments on any such requests filed by Vega.

<sup>1</sup> Vega incorporated by reference into this proceeding its foreign air carrier permit application filed contemporaneously in Docket OST-2001-10350.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions (attached) ☐ Foreign air carrier permit conditions (Order - - )

☒ Special conditions: Vega shall obtain approved flight routings from the Federal Aviation Administration for all flights operated pursuant to this authority. To facilitate the establishment of satisfactory flight routings, we will require that Vega comply with the filing requirements set forth in 14 CFR 212.9(e).

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

## **FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).